

The Nagar Rice & Flour Mills and Others

Vs

N. Teekappa Gowda & Bros. and Others

Civil Appeal No. 2228 of 1969

(K. S. Hegde, A. N. Grover, J. C. Shah JJ)

27.02.1970

JUDGMENT

SHAH, J. -

1. This appeal is filed with special leave against the judgment of the High court of Mysore setting aside the order dated January 20, 1969, of the Director of Food and Civil Supplies of the State of Mysore under the Rice Milling Industry (Regulation) Act 21 of 1958.
2. The appellants established a rice mill many years ago in village Mudugoppa, District Shimoga, in the former Indian State of Mysore and carried on milling operations. The respondents - N. Teekappa Gowda and Bros. - established in 1963 a rice mill in village Kelandur at a distance of about 1 1/2 miles from the site of the appellants' mill. A notification under the Land Acquisition Act, 1894 was issued in March, 1966 for compulsory acquisition of the land and buildings on the site of the appellants' rice mill for use in the Sharavathi Hydro-Electric Project. In October, 1967' an award acquiring the land and buildings was made. The award expressly recited that the appellants were entitled to remove the machinery of the rice mill.
3. The appellants in the meanwhile applied to the Special officer for Rehabilitation of the State of Mysore to allot them a suitable new site in which their rice mill may be located. The Special Tahsildar for Rehabilitation sanctioned that the rice mill building may be shifted to a site in Survey No. 233 of Mudugoppa granted to the appellants by the State of Mysore. By order dated January 20, 1969, the Director of Food and Civil Supplies passed an order sanctioning the change in the location of the appellants' rice mill from its original site to the new site "as per the provisions contained in Section 8(3)(c) of the Rice Milling Industry (Regulation) Act 1958", and rejected the objection raised by the respondents.
4. The respondents then moved a petition in the High Court of Mysore for a direction quashing the order dated January 20, 1969 passed by the Director of Food and Civil Supplies on the plea that the appellants' mill was moved to a place in the vicinity of their rice mill in the Kelandur village in contravention of Sections 5 and 8 of the Rice Milling Industry (Regulation) Act, 1958, and in consequence of the removal of the appellants' mill "their business was likely to be adversely affected".
5. The High Court held that permission under Section 8(3)(c) was a condition precedent to the shifting of the location of the rice mill, and since the appellants did not obtain the previous permission to shift the mill, the order of the Director was liable to be "struck down as ultra vires". In the view of the Court, by the shifting of the appellants' rice mill the respondents' business was

directly affected and they had a right to challenge the legality of the order. The High Court upheld the claim of the respondents on the sole ground that the order of the Director was made in violation of the mandatory injunction of the Rice Milling Industry (Regulation) Act 21 of 1958 and it prejudicially affected the business of the respondents as rice-millers.

6. The Parliament enacted the Rice Milling Industry (Regulation) Act 21 of 1958 to regulate rice milling. By Section 3(s) a "defunct rice-mill" is defined as meaning "a rice-mill in existence at the commencement of this Act but in which rice milling operations have not been carried on for a period exceeding one year prior to such commencement". By Section 3(b) "existing rice-mill" means "a rice-mill carrying on rice-milling operations at the commencement of this Act, and includes a rice-mill in existence at such commencement which is not carrying on rice-milling operations but in which rice-milling operations have been carried on at any time within a period of one year prior to such commencement". By Section 2(e) "new rice-mill" means "a rice-mill other than an existing rice-mill or a defunct rice-mill". By Section 2 (f) "rice-mill" is defined as meaning "the plant and machinery with which and the premises, including the precincts thereof in which or in any part of which, rice-milling operations is carried on". By Section 5 provision is made for grant of permits in respect of new or defunct rice-mills. By subsection (1) of Section 5 it is provided that any person of authority may make an application to the Central Government for the grant of permit for the establishment of a new rice mill, and any owner of a defunct rice mill may make a like application for the grant of a permit for re-commencing rice milling operation in such mill. By sub-section (4) and sub-section (5) grant the permit specifying there in the period within which the mill is to be established. Sub-section (4) provides :

"Before granting any permit under sub-section (3), the Central Government shall cause full and complete investigation to be made in the prescribed manner in respect of the application and shall have due regard to -

- (a) the number of rice mills operating in the locality;
- (b) the availability of paddy in the locality;
- (c) the availability of power and water supply for the rice mill in respect of which a permit is applied for;
- (d) whether the rice mill in respect of which a permit is applied for will be of the huller type, shaller type or combined sheller-huller type;
- (e) whether the functioning of the rice mill in respect of which a permit is applied for would cause substantial unemployment in the locality;
- (f) such other particulars as may be prescribed."

By sub-section (6) a permit granted under Section 5 is effective for the period specified therein or for such extended period as the Central Government may think fit to allow in any case. Section 6 provides for grant of licences. Any owner of an existing rice mill or of a rice mill in respect of which a permit has been granted under Section 5 may make an application to the licensing officer for the grant of a licence for carrying on rice-milling operations in that rice-mill. By sub-section (3) of Section 6 the licensing officer is obliged to grant the licence on payment of the fee and on deposit of such sum as may be prescribed as security for due performance of the conditions. By sub-section (4) a licence granted under Section 6 is valid for the period specified therein, and may be

renewed from time to time for such period and on payment of such fees and on conditions as may be prescribed. Section 7 provides for revocation, suspension and amendment of licences. By Section 8 restrictions are placed on rice mills. Under sub-section (1) no person or authority shall, after the commencement of the Act, establish any new rice mill except under and in accordance with a permit granted under Section 5. By sub-section (2) no owner of a rice mill shall, after the commencement of the Act, carry on rice milling operation except under and in accordance with a licence granted under Section 6. By sub-section (3), in so far as it is relevant, it is provided :

"No owner of a rice-mill, -

#(a) X X X(b) X X X##

(c) shall, without the previous permission of the Central Government, change the location of the whole or any part of the rice mill in respect of which a licence has been granted under Section 6;

#X X X X."##

Section 13 provides for penalties for contravention or attempts to contravene or abetting the contravention of any of the provisions, inter alia, of Section 8. Power of the Central Government to issue a permit under Section 5 and under Section 8(3)(c) to change the location of rice mill is delegated to the Director of Food and Civil Supplies.

The Director of Food and Civil Supplies sanctioned, in exercise of the power under Section 8(3)(c) of the Act that the location of the rice mill of the appellants may be shifted. The High Court declared the order invalid on the ground that the previous sanction had not been obtained. The Court observed that "where an officer granting a licence or passing an administrative order exceeds his powers and makes an order in violation of the provision which clothes him with that power, his order is liable to be struck down", and since Section 8(3)(c) contemplated grant of permission for change of location before the plant and the machinery were actually shifted to a new site, the Director of Food and Civil Supplies had no power to grant permission after the machinery and plant had been shifted.

7. The rice mills for the purpose of the Act were divided into three classes : defunct rice mills, existing rice mills and new rice mills. Defunct rice mills are those which had ceased functioning for a period exceeding one year prior to the commencement of the Act; existing rice mills are those which carry on rice milling operations at the commencement of the Act or hand carried on rice milling operations within one year prior to the commencement of the Act; and new rice mills are those which are other than existing rice mills or defunct rice mills. In respect of all rice mills a licence for carrying on rice milling operations under Section 6 must be obtained. In respect of a rice mill new or defunct a permit under Section 5 has first to be obtained. No permit is required by an existing rice mill. In granting the permit the authority has to take into consideration matters which are specified in sub-section (4) of Section 5. The licencing authority must on application issue a licence to an existing rice mill or a rice mill in respect of which a permit has been granted under Section 5. For change in the location of any rice mill in respect of which a licence has been granted under Section 6, the previous permission of the Central Government is necessary under Section 8(3)(c).

8. The Parliament has by the Rice-Milling Industry (Regulation) Act, 1958, prescribed limitations that an existing rice mill shall carry on business only after obtaining a licence and if the rice mill is

to be shifted from its existing location, previous permission of the Central Government shall be obtained. Permission for shifting their rice mill was obtained by the appellants from the Director of Food and Civil Supplies. The appellants had not started rice milling operations before the sanction of the Director of Food and Civil Supplies was obtained. Even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, we fail to appreciate what grievance the respondents may raise against the grant of permission by the authority permitting the installation of machinery on a new sit. The right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i).

9. Section 8(3)(c) is merely regulatory, if it is not complied with the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice mill of the appellants be regarded as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19(6) but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed.

10. But Mr. Gokhale for the respondents contended that in granting the permission under Section 8(3)(c) the authority was bound to take into account matters which govern the issue of a permit under Section 5(4) of the Act. Counsel submitted that sub-section (3)(c) of Section 8 was enacted with a view to ensure adequate milling facilities and to prevent unfair competition and on that account it is provided that when the location of an existing rice mill has to be shifted, the authority had to take into consideration the number of rice mills operating in the locality; the availability of power and water supply for the rice mill in respect of which a permit is applied for; whether the functioning of the rice mill in respect of which a permit is applied for would cause substantial unemployment in the locality; and such other particulars as may be prescribed. According to counsel, since the Act was intended to regulate the carrying on of business of rice mills in the country, it was implicit in Section 8(3)(c) that the authority sanctioning the change of location of a rice mill shall consider whether another person was by the shifting likely to be prejudiced thereby. This, counsel says, the Director did not consider, and on that account the order is liable to be set aside because the right of the respondents is infringed. This argument was not advanced before the High Court, and, in our judgment, has no substance. The consideration which are prescribed by sub-section (4) of Section 5 only apply to the grant of a permit in respect of a new rice mill or a defunct rice mill. They have no application in considering the shifting the location of an existing rice mill. In respect of a new or defunct rice mill a permit and a licence are both required; in respect of an existing rice mill only a licence is required. The conditions prescribed by sub-section (4) of Section 5 only apply to the grant of a permit and not to a licence. By Section 8(3)(c) it is made one of the conditions of the licence that the location of the rice mill shall not be shifted without the previous permission of the Central Government. It is true that the appropriate authority clothed with the power must consider the expediency of permitting a change of location. But there is no statutory obligation imposed upon him to take into consideration the matters prescribed by sub-section (4) of Section 5 in granting the permission to change the location.

11. The appellants had been carrying on business in milling rice for more than 30 years and the mill

was by reason of the proposal to submerge the site in the Sharavathi Hydro-Electric Project had to be shifted from its location. The State allotted another piece of land to the appellants and did not acquire their machinery and permitted erection of their rice mill building on the new location. This was done with a view to cause minimum hardship to the appellants arising in consequence of the proposed construction of the dam resulting in submerger of their land. The State also granted permission to the appellants to change the location under the Rice Milling Industry (Regulation) Act, 1958. The permission cannot be said to be granted without consideration of the relevant circumstances.

12. The appeal is allowed and the petition filed by the respondent N. Teekappa Gawda and Brothers is ordered to be dismissed with costs throughout in favour of the appellants.

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